IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 925 OF 2005

Smt. Anita A. Ovalekar .. Appellant

Vs.

Life Insurance Corporation of India .. Respondent

Mr. Ramu Singh for Appellant.
Ms. Manisha Pant i/by M/s. Bhave & Co. for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : October 19, 2005.

P.C.:

1. Heard Mr. Singh the learned counsel for the appellant-plaintiff and Ms. Pant the learned counsel for the respondent-defendant.

2. This appeal arises from the order dated 11/8/2005 passed by the learned Judge of the City Civil Court at Mumbai dismissing Notice of Motion No.2677 of 2005 filed in B.C.C.S.C. Suit No.2962 of 2005. By the said order the learned Judge of the trial court also returned the plaint to the plaintiff for presentation before the appropriate forum.

3. The suit premises is room no.6 of Mengle Chawl

located on T.C. No.5447, Borivali (East) and the premises belonged to the defendant-Corporation, a Government of India undertaking. The plaintiff claimed that she was in lawful occupation of the suit room. She was issued notice of eviction dated 25/1/2005 by the defendant-Corporation in response to her letter dated 5/10/1999. The plaintiff apprehended that the premises would be taken over by the defendant and, therefore, filed the suit i.e. B.C.C.C. Suit No.2962 of 2005 for declaration that she was the LR of the original occupant late Shri Anantrao Pathare and thus entitled to succeed him as the lawful occupant of the suit room. She also prayed for permanent injunction against the defendant from removing and/or dispossessing the plaintiff from the suit room high handedly, illegally or otherwise than due course of law or in any manner whatsoever.

4. The defendant raised an objection to the jurisdiction of the trial court to entertain and try the suit on the ground that the suit room was a public premises within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Act"). It was also pointed

out that unless the preliminary issue of jurisdiction was decided, Notice of Motion filed for temporary injunction under Order 39 Rule 1 and 2 of C.P.C. could not be decided. The learned Judge of the trial court decided the preliminary issue as well as the Notice of Motion by the impugned order.

5. There is no dispute that the suit room is public premises within the meaning of Section 2(e) of the Act. Section 2(g) of the said Act defines the term "unauthorised occupation" and it means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Section 15 of the Act deals with bar of jurisdiction of the Civil Court to entertain any suit or other proceedings in respect of (a) the eviction of any person who is in unauthorised occupation of any public premises, (b) the removal of any building, structure or fixture or goods from any public premises under Section 5-A and

so on and so forth.

6. The plaintiff claims that her father Shri Kishore Eknath Mhatre was the brother of Mrs. Kamla Pathare, the wife of Mr. Anantrao Pathare, who was the original occupant of the suit room. Mr. Anantrao Pathare died on 6/12/1983 and his wife Kamla died on 20/11/1985. As per the plaintiff she moved into the suit room sometimes in the year 1983-84 at the request of her aunt (father's sister) Smt. Kamla Pathare. It is thus clear that the plaintiff is not a blood relation of Mr. Anantrao Pathare.

6A. By her letter dated 5/10/1999 addressed to the Zonal Manager of the defendant-Corporation, the plaintiff informed that the suit premises required urgent repairs and the premises were in such a bad condition that there was eminent possibility of collapse of the building/structure. She further stated that she was at the relevant time staying with Mr. Arun Kishore Mhatre, Mhatre House, Mhatre Cross Lane, Dattapada, Borivali (E). The trial court considered the correspondence between the plaintiff and the defendant and concluded that the plaintiff was

not occupying the suit room at the first instance and in any case she could not claim to be the LR of the original occupant Mr. Anantrao Pathare. The defendant had called upon her to vacate the premises which she had kept locked and, therefore, the bar of Section 15 of the Act operates in entertaining the suit. The reasoning given by the trial court cannot be faulted with on any count and, therefore, the challenge to the impugned order is devoid of merits.

7. Hence, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)